

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Edward J. DeFranco (Bar No. 165596)
eddefranco@quinnemanuel.com
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Kevin P.B. Johnson (Bar No. 177129)
kevinjohnson@quinnemanuel.com
Todd M. Briggs (Bar No. 209282)
toddbriggs@quinnemanuel.com
David E. Myre (Bar No. 304600)
davidmyre@quinnemanuel.com
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, California 94065-2139
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

SINGER / BEA LLP

Benjamin L. Singer (Bar No. 264295)
bsinger@singerbea.com
Renee Bea (Bar No. 268807)
rbea@singerbea.com
601 Montgomery Street, Suite 1950
San Francisco, California 94111
Telephone: (415) 500-6080
Facsimile: (415) 500-6080

Attorneys for Plaintiff
TELESOCIAL, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TELESOCIAL, INC.,

Plaintiff,

vs.

ORANGE S.A., et al.,

Defendants.

CASE NO. 3:14-CV-03985-JD

**DECLARATION OF GEORGE FOSTER
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO EXCLUDE OPINIONS AND
TESTIMONY FROM GEORGE FOSTER**

Date: February 16, 2017
Time: 10:00 am
Ctm: 11, 19th Floor
Judge: Hon. James Donato
Trial: April 10, 2017

1 I, George Foster, Ph.D., declare as follows:

2 1. I am over 18 years of age, and not a party to the above-captioned litigation. This
3 declaration is based on my personal knowledge following a reasonable investigation. If called
4 upon as a witness, I could competently testify to the truth of each statement herein.

5 2. Attached hereto as **Exhibit 1** is a true and correct copy of the Expert Report of
6 George Foster, Ph.D. (my "Report"), including all Appendices and Exhibits thereto, totaling 91
7 pages. The views and conclusions expressed in this Report continue to accurately represent my
8 expert opinion as of the date of this declaration.

9 3. I was deposed by Orange on December 22, 2016 in San Francisco, California.
10 Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the certified transcript of
11 my deposition (my "Deposition").

12 4. As is explained in my Report (¶¶69-75), and as was also discussed during my
13 Deposition (*see* 113:3-13), it is widely understood in my field of expertise that differentiation
14 among early-stage companies is to be expected because venture capitalists and entrepreneurs
15 seeking venture capital attempt to create new industries or product categories rather than build
16 "look-alike" companies in existing industries. My valuation approach adopts a common method
17 for conducting comparable analyses in such circumstances, by sampling within a common
18 industry vertical. The following are some examples of industry publications that corroborate the
19 general acceptance of this approach:

20 a. Attached hereto as **Exhibit 3** are true and correct excerpts from a 2004
21 *International Small Business Journal* article by Colin Mason and Matthew
22 Stark, entitled "What do Investors Look for in a Business Plan? A Comparison
23 of the Investment Criteria of Bankers, Venture Capitalists and Business
24 Angels," accessed on January 18, 2017. This article is publicly available at
25 <http://journals.sagepub.com/doi/pdf/10.1177/0266242604042377>.

26 b. Attached hereto as **Exhibit 4** are true and correct excerpts from a May 2008
27 *Entrepreneurship Theory and Practice* article by Nikolaus Franke, et al.,
28

entitled "Venture Capitalists' Evaluations of Start-Up Teams: Trade-Offs, Knock-Out Criteria, and the Impact of VC Experience," accessed on January 18, 2017. This article is publicly available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6520.2008.00236.x/epdf>.

5. Valuation literature acknowledges that no two companies are identical, and that valuation based on comparable companies requires an examination of companies that are approximately similar. For example, attached hereto as **Exhibit 5** is a true and correct copy of an excerpt from the 2013 textbook *Business Analysis & Valuation: Using Financial Statements* by Krishna G. Palepu and Paul M. Healy.

6. In September 2016, the National Venture Capital Association (the "NVCA"), the flagship trade association for venture capital firms, partnered with and fully endorsed PitchBook as its official data provider. See NVCA webpage entitled "PitchBook-NVCA Partnership," publicly available at <http://nvca.org/research/pitchbook-nvca-partnership/>, and the NVCA Press Release entitled "PitchBook Named the Official Data Provider of NVCA," publicly available at <http://nvca.org/pressreleases/pitchbook-named-official-data-provider-nvca/>, which websites were last accessed by me on January 17, 2017.

7. The NVCA webpage identifies 303 venture capital firms that are currently members of the NVCA. This webpage is publicly available at <http://nvca.org/about-nvca/members/>, and was last accessed by me on January 17, 2017.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Palo Alto, California on February 14, 2017.

By: George Foster
George Foster, Ph.D.